

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JAN 15 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

TERRY F. ZDUN; et al.,

Plaintiffs - Appellants,

v.

PAULA HENDERSON, Revenue Agent,

Defendant - Appellee.

No. 07-35465

D.C. No. CV-06-06072-TMC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Oregon
Ann Aikin, District Judge, Presiding

Submitted December 17, 2008^{**}

Before: WALLACE, TROTT, and RYMER, Circuit Judges.

Terry Zdun, Carol Zdun, and Dentex, P.C., appeal pro se from the district court's judgment dismissing their petition to quash summonses issued by Internal Revenue Service ("IRS") revenue agent Paula Henderson. We have jurisdiction

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

under 28 U.S.C. § 1291. We review for clear error. *United States v. Blackman*, 72 F.3d 1418, 1422 (9th Cir. 1995). We affirm in part and dismiss in part.

The district court properly dismissed the action based on the government's prima facie showing that the summonses were issued in good faith. *See Stewart v. United States*, 511 F.3d 1251, 1254 (9th Cir. 2008) (describing requirements for enforcing summons and concluding that the government met its burden by introducing a sworn declaration from the revenue agent who issued the summons). Further, the district court correctly determined that IRS agent Henderson is not a proper defendant. *See Adams v. Johnson*, 355 F.3d 1179, 1185-86 (9th Cir. 2004) (holding that *Bivens* relief is unavailable against IRS auditors for conducting tax assessments and collections); *Gilbert v. Da Grossa*, 756 F.2d 1455, 1458 (9th Cir. 1985) (stating that a suit against an IRS employee for actions taking in his official capacity is a suit against the United States).

This appeal by Dentex, P.C., is dismissed because a corporation may not appear pro se. *See Rowland v. California Men's Colony*, 506 U.S. 194, 201-02 (1993) ("It has been the law for the better part of two centuries . . . that a corporation may appear in the federal courts only through licensed counsel.").

Appellants' remaining contentions are unpersuasive.

AFFIRMED in part; DISMISSED in part.